

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**PATRICK J. HIGGINS****APPELLANT****v.****No. 2014-CA-00251****STATE OF MISSISSIPPI****APPELLEE**

**REPLY BRIEF OF APPELLANT
PATRICK J. HIGGINS**

ORAL ARGUMENT REQUESTED

ON APPEAL FROM THE
CIRCUIT COURT OF WARREN COUNTY
No. 12,0030CI

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

PATRICK J. HIGGINS

APPELLANT

v.

No. 2014-CA-00251

STATE OF MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Miss. R. App. P. 28(a)(1), the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal:

1. Patrick J. Higgins, *Appellant*
2. The Honorable M. James Chaney, Jr., *Warren County Circuit Court*
3. Sage Egger Harless of SAGE EGGER HARLESS, ATTORNEY AT LAW, PLLC, David Neil McCarty of DAVID NEIL MCCARTY LAW FIRM, PLLC, and Graham P. Carner of GRAHAM P. CARNER, PLLC, *Counsel for the Appellant*
4. The State of Mississippi, *Appellant*
5. Alison O’Neal McMinn of the OFFICE OF THE ATTORNEY GENERAL, *Counsel for the Appellee*
6. Malissa Wilson (Winfield) and Roger Googe of the OFFICE OF THE ATTORNEY GENERAL, *Trial Counsel for the Appellee*

So CERTIFIED, this the 21st day of Octobere, 2015.

Respectfully submitted,

s/ Sage Egger Harless
Sage Egger Harless
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Attorney for Appellant

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Summary of the Reply Argument

The evidence in this civil case was that Patrick Higgins lacked the requisite intent to commit the crimes for which he was wrongfully convicted. Mr. Higgins had regained the presumption of innocence when the Mississippi Court of Appeals declared that the evidence against him was insufficient to support a finding of guilt. *See Higgins v. State*, 95-KA-00124-COA (Miss. Ct. App. 1994) (unpublished opinion); R. at 9-21. Nevertheless, the trial court applied an improper statutory presumption of guilt when it determined the question of intent. As intent was the only element of the crime in question, this Court must reverse the order of the trial court denying him compensation.

Statement Regarding Oral Argument

Pursuant to MRAP 34(b), oral argument would assist the Court in resolving this case. Over twenty years ago, the Mississippi Court of Appeals reversed and rendered Patrick Higgins' three felony convictions, finding that the evidence of guilt was insufficient. When he sought compensation for the 50 months he had been wrongfully imprisoned, the trial court denied his claim based on an impermissible presumption of guilt. Moreover, the trial court's factual findings were based largely on inadmissible and highly prejudicial evidence. Oral argument would clarify how these issues mandate both a reversal of the trial court and a judgment rendering that Mr. Higgins' was wrongfully convicted.

Reply Argument

I. Patrick Higgins Did Not Have the Intent to Defraud as Required by Statute.

Because Mr. Higgins did not have the intent to defraud, he must be compensated for the time he was wrongfully imprisoned.

The elements of a wrongful conviction and imprisonment claim are spelled out in Mississippi Code Section 11-44-7.¹ The only contested element of Mr. Higgins' claim was whether he met the requirements of subsection (1)(b). Under this subsection, the claimant must prove by a preponderance of the evidence that "he did not commit the felony or felonies for which he was sentenced . . . or the acts or omissions for which plaintiff was sentenced did not constitute a felony." Miss. Code Ann. §11-44-7(1)(b).

Under the wrongful conviction law, a person seeking to recover must make a delicate point—to prove by a preponderance of the evidence either that they did not commit a felony or that "the acts or omissions for which he was sentenced did not constitute a felony." In order to satisfy the "(1)(b) requirement," it is proper to turn to the elements of the crime of which the claimant was originally convicted.

A claimant fulfills subsection (1)(b)'s requirements in two ways: (1) when one or more of the elements of the crime are missing; or (2) when their acts or omissions do not constitute a felony. Consequently, a plaintiff might focus their energies on proving that a deadly weapon was not used, or that a thing of value was not taken, or whatever the facts warrant given the particular case.

¹ Parsed out individually, those elements are:

1. That he was convicted of one or more felonies. Section 11-44-7(1)(a);
2. That he was sentenced to a term of imprisonment. Section 11-44-7(1)(a);
3. That he served all or any part of his sentence. Section 11-44-7(1)(a);
4. That he was pardoned under certain circumstances, or that his conviction was reversed or vacated and the accusatory instrument dismissed or nol prossed or, if new trial is ordered, the plaintiff was found not guilty. Section 11-44-7(1)(a)(ii);
5. That he did not commit the felony for which he was sentenced and which serves as grounds for the Complaint or the acts or omissions for which plaintiff was sentenced did not constitute a felony. Section 11-44-7(1)(b);
6. That he did not commit or suborn perjury or fabricate evidence to bring about his conviction. Section 11-44-7(1)(c); and,
7. The length of his incarceration, which determines the amount of compensation to which the plaintiff is entitled upon proving the other elements of his claim. Section 11-44-7(2).

In this case, Mr. Higgins's core focus was that he did not have the intent to defraud, and, accordingly, could never have been guilty of issuing "bad checks" in violation of Mississippi Code section 97-19-55 (1993).

At the time of Mr. Higgins's alleged crime, the Legislature defined the felony as follows:

It shall be unlawful for any person *with fraudulent intent* to make, draw, issue, utter or deliver any check, draft or order for the payment of money drawn on any bank, corporation, firm or person for the purpose of obtaining money, services or any article of value, or for the purpose of satisfying a preexisting debt or making a payment or payments on a past due account or accounts, *knowing at the time* of making, drawing, issuing, uttering or delivering said check, draft or order that the maker or drawer has not sufficient funds in or on deposit with such bank, corporation, firm or person for the payment of such check, draft or order in full, and all other checks, drafts or orders upon such funds then outstanding.

Miss. Code Ann. § 97-19-55 (1993) (emphasis added). Although the statutes defining so-called "false pretenses" have undergone many revisions over the last century, an essential element of the crime has always been fraudulent intent. The Mississippi Supreme Court made clear long ago, "The statute does not make it a crime to draw bad checks. The crime therein defined is the drawing, uttering, or delivering of bad checks, orders, or drafts with the intent to defraud." *McBride v. State*, 141 Miss. 186, 190, 104 So. 454 (1925). *See also e.g., Henderson v. State*, 534 So. 2d 554, 556 (Miss. 1998) ("The statute first requires that when the maker of the check writes it, she has to *know at the time* that she has not sufficient funds in or on deposit with such bank.") (emphasis in original) (internal quotations omitted).

Mr. Higgins presented evidence that he had no intention of defrauding Southern Lock when he wrote the checks. Although the State classifies it as a recantation from his criminal trial, there was no testimony from him in that trial from which he could have recanted. Mr. Higgins was acting as his own counsel and was simply making an argument that the State could not prove its case. As jurors are frequently reminded, "the argument of counsel is not evidence."

Mr. Higgins testified for the first time at his civil trial, and he consistently denied any

fraudulent intent. Unfortunately, the trial court presumed his guilt when it applied Mississippi Code section 97-19-57. As explained in the principal brief, that statute improperly relieves the State of proving intent to defraud.² The Court of Appeals aptly declared such a mandatory presumption unconstitutional in *Durham v. State*, 74 So. 3d 908 (Miss. Ct. App. 2011). Because the trial court

Without fraudulent intent, there can be no crime. Mr. Higgins should never have been imprisoned for crimes that the State failed to prove, and for that he deserves compensation.

Conclusion

Because Mr. Higgins' testimony established that he did not intend to defraud the drawee, the only element of the crime in question, he met his burden of proof and is entitled to compensation under the MCC.

As a result, this case should be REVERSED and judgment RENDERED in favor of the Appellant, awarding him compensation, attorneys' fees and expenses.

Respectfully submitted, this the 21st day of October, 2015.

s/ Sage Egger Harless

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² In 1993, *Miss. Code Ann.* § 97-19-57(1) read as follows:

As against the maker or drawer thereof, the making, drawing, issuing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence and create a **presumption of intent to defraud and of knowledge of insufficient funds in**, or on deposit with, such bank, corporation, firm or person, provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with a service charge not to exceed Thirty Dollars (\$30.00), within fifteen (15) days after receiving notice that such check, draft or order has not been paid by the drawee.

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CERTIFICATE OF SERVICE

I, Sage Egger Harless, certify that I have served a copy of the above and
foregoing document to the following via filing with the MEC electronic filing system:

Ms. Muriel Ellis, Clerk
MISSISSIPPI SUPREME COURT

Attorney for Appellee

Alison O'Neal McMinn
OFFICE OF THE ATTORNEY GENERAL

And have further provided paper copies via U.S. Mail to the following:

The Trial Court

Honorable M. James Chaney, Jr.
Warren County Circuit Court
P.O. Box 351
Vicksburg, MS 39181

On October 21, 2015.

s/ Sage Egger Harless
SAGE EGGER HARLESS